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**Testimony of
Elder Law Section
Connecticut Bar Association**

In SUPPORT of

**SB 973
AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP FOR
PURPOSES OF MEDICAID ELIGIBILITY**

**Aging Committee
February 24, 2011**

Good morning, members of the Committee on Aging. I am Sharon L. Pope, the Chair of the Connecticut Bar Association Elder Law Section. I am testifying in support of a bill to establish a rule required by federal law that is essential to vulnerable seniors and younger disabled individuals who have no access to critical health care due to a denial of Medicaid benefits.

In 2006, the United States Congress adopted sweeping changes to the Medicaid program known as the Deficit Reduction Act ("DRA"). One of those changes requires States to adopt regulations which allow a waiver of a denial of Medicaid benefits if that denial would result in a threat to an individual's health or life and therefore cause undue hardship.

The Department of Social Services published a notice of intent to adopt regulations to implement the DRA in April, 2007 and included a provision defining undue hardship. A broad coalition of elder law advocates objected to the DSS proposal because it defined undue hardship in very restrictive terms and inconsistent with federal law. The advocates included representatives of the Connecticut Alzheimer's Association, the Connecticut Association of Not for Profit Providers ("CANPFA"), Connecticut Legal Services organizations, the Connecticut chapter of the National Academy of Elder Law Attorneys and the members of our Connecticut Bar Association Elder Law Section.

This legislature's Regulations Review Committee, following advice from the Legislative Commissioner's office, rejected the DSS proposed DRA rules in June, 2009. The chairs of the Committee subsequently convened a meeting in August, 2009 among DSS policy staff and the coalition of the elder law advocates. At the request of the committee chairs, all the parties including the advocates and DSS policy staff agreed to meet to discuss the specific objections to the DSS proposals.

After six months of negotiations among the parties, all the groups agreed to language which addressed a majority of the objections to the DSS proposals, including the specific undue hardship rule. After a thoughtful, thorough and prolonged discussion of the issues and through compromises by all parties, the group collectively agreed to a rule on undue hardship which all accepted. We agree that it establishes, for the first time, a meaningful process to implement this significant federal requirement permitting an undue hardship waiver of a Medicaid denial.

To our disappointment, DSS then refused to refile the negotiated regulations. Now our colleagues at the Connecticut Legal Services organizations have proposed a bill establishing undue hardship which incorporates the specific rule all the parties, including DSS, accepted after our extensive negotiations.

The CBA Elder Law Section strongly endorses the proposal establishing an undue hardship waiver of a Medicaid denial as drafted by the Connecticut Legal Services organizations. It is long past the time when this rule should be adopted. The Congress created the sweeping changes in the Medicaid program more than five years ago. The undue hardship waiver is a fundamental requirement which is intended to protect our Connecticut citizens who are vulnerable and at risk of serious, even life threatening medical conditions because they do not have access to health care. This is particularly important for individuals who may be able to remain in their own homes if they receive home care services.

We urge this committee to accept the Connecticut Legal Services proposal as a substitute for SB 973.